

NOT FOR PUBLICATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LIVIA UJHELYI,

Plaintiff,

v.

TOM VILSACK, SECRETARY, U.S.
DEPARTMENT OF AGRICULTURE

Defendant.

No. C 12-04282 JSW

**ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT
AND RESOLVING PENDING
MOTIONS**

**(Docket Nos. 107, 119, 135, 143, 147,
149.)**

This matter comes before the Court upon consideration of the following motions: (1) the motion for summary judgment filed by Defendant Tom Vilsack, Secretary, United States Department of Agriculture (“Secretary Vilsack”); (2) the motion to compel discovery filed by Plaintiff Livia Ujhelyi (“Ms. Ujhelyi”); (3) the motion to continue a ruling on the motion for summary judgment, pursuant to Federal Rule of Civil Procedure 56(d) (“the Rule 56(d) Motion”), filed by Ms. Ujhelyi; (4) the motion for leave to file a request for judicial notice filed by Ms. Ujhelyi; (5) and the motion for leave to file a motion for sanctions filed by Ms. Ujhelyi.¹

The Court has considered the parties’ papers, relevant legal authority, and the record in this case, and it hereby GRANTS Secretary Vilsack’s motion for summary judgment. The Court sets forth its rulings on other pending motions in the remainder of this Order.

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¹ Ms. Ujhelyi also filed motion for leave to file a reply to Secretary Vilsack’s response to her motions for leave to file a request for judicial notice and for leave to file a motion for sanctions. (Docket No. 149.) For the reasons set forth in Sections C and D of this Order, and because the Court concludes that it does not require a reply to Secretary Vilsack’s response, the Court DENIES the motion for leave to file a reply.

BACKGROUND

On July 14, 2002, the United States Department of Agriculture's Food Safety and Inspection Service ("USDA FSIS") hired Ms. Ujhelyi as a Veterinary Medical Officer. (Docket No. 115, Declaration of Rebecca Falk ("Falk Decl."), Ex. A (Deposition of Livia Ujhelyi ("Ujhelyi Depo.") at 45:21-24, 145:10-146:9, 173:8-174:13, Depo. Ex. 11); Docket No. 46 (First Amended Complaint ("FAC") ¶¶ 45, 52, 120-121).) Following orientation and approximately five months of training, USDA FSIS assigned Ms. Ujhelyi to cover three establishments in Eureka, California, including a company called Premiere Brand Meats ("Premiere"). (Ujhelyi Depo. at 58:25-59:2, 63:6-64:2.)

About two months after Ms. Ujhelyi began work in Eureka, Ms. Ujhelyi's supervisor, Dr. Fred Aquino, visited Premiere. He reported to USDA FSIS that Premiere's owners, Roger and Laura Lawson, treated him with hostility and that he was concerned for his safety. Mark Crowe, a USDA FSIS compliance inspector, also reported that the Lawsons treated him with a hostile and threatening manner. (*See, e.g., id.* at 70:18-71:1, 71:10-13, 72:7-74:2, 76:15-87:1, 100:1-106:1; Docket No. 117, Declaration of Abdalla Amin ("Amin Decl."), ¶ 4, Ex. A at USA 740-41.) Ms. Ujhelyi observed the Lawsons' hostility during those visits and testified that the Lawsons often expressed hostile feelings toward the USDA. (*See, e.g., Ujhelyi Depo.* at 68:12-69:15, 76:15-77:17, 112:14-115:21.)

On May 5, 2003, Ms. Ujhelyi sent an e-mail to Dr. Adel Malak, Deputy District Manager for the Alameda District Office, to ask if the Lawsons had permission to operate a tumbler off hours and before the machine had been inspected, and Dr. Malad responded the USDA had not given them permission to do so.² (Ujhelyi Depo. at 106:10-109:16, and Depo. Ex. 1 at USA 236-37.)

On May 14, 2003, Ms. Ujhelyi observed that Premiere had started the tumbler before she arrived to inspect it. According to Ms. Ujhelyi, when she raised the issue with Mrs. Lawson, Mrs. Lawson "started getting – throwing papers around, her hair kind of – you know – pulling her hair, and 'you have to talk to my husband.' And it was a rage situation." (Ujhelyi

² Tumblers are used to marinate and prepare meat.

1 Depo. at 110:17-24; *see also id.* at 111:9-3.) Mr. Lawson arrived later and, after Ms. Ujhelyi
2 notified him of the problem, he also became upset and hostile. Ms. Ujhelyi feared for her safety
3 and left the plant without completing her duties. (*Id.* at 112:14-117:9.)

4 After she left Premiere, Ms. Ujhelyi called Dr. Malak and told him about the incident.
5 Dr. Malak told Ms. Ujhelyi to report the incident on “Form 4735, Reporting Form for Assault,
6 Threats of Assault, Intimidation” (“Form 4735”). Ms. Ujhelyi did not complete the form
7 immediately, because she was “in shock.” She also feared that documenting the incident could
8 make the plant owners especially hostile to her. (*Id.* at 117:10-121:2.) However, after she
9 consulted with her husband, Ms. Ujhelyi decided to complete the form and submitted it within
10 24 hours, as required by USDA policy. (Ujhelyi Depo. at 121:3-123:23, 125:9-14, Depo. Ex. 2
11 at USA 239-241.)

12 Mrs. Lawson also apparently called Ms. Ujhelyi at some point after the incident,
13 although the parties dispute what happened during this call. Ms. Ujhelyi claims Mrs. Lawson
14 asked what would happen to the plant, and she responded that Mrs. Lawson would have to
15 contact the District to find out. (*Id.* at 126:19-127:11, 128:8-15.) Ms. Ujhelyi also testified that
16 Dr. Malak asked her if she would be willing to accept an apology. (*Id.* at 127:12-128:7.)
17 However, according to Dr. Murli Prasad, Ms. Ujhelyi’s District Manager, Mrs. Lawson “called
18 Dr. Ujhelyi and apologized. Dr. Ujhelyi accepted her apology, and by doing so, Dr. Ujhelyi
19 misrepresented the [USDA] and the District by accepting such an apology, although she was
20 instructed not to accept any verbal apology from the plant owner after harassment or
21 intimidation incidents.” (Amin Decl., ¶ 4, Ex. A at USA 790.)

22 As a result of this incident, USDA FSIS suspended Premiere for three days. (*Id.*, Ex. A
23 at USA 740-743.) On or about May 20, 2013, USDA FSIS lifted the suspension. (*Id.*, Ex. A at
24 USA 758-760.) Dr. Prasad directed Ms. Ujhelyi to resume her duties at Premiere, and she went
25 back to Premiere on May 20, 2014. (Ujhelyi Depo. at 133:14-134:14.) Although Ms. Ujhelyi
26 returned to Premiere that day, and for a few days thereafter, she testified that she continued to
27 feel threatened and intimidated by another Premiere employee. (Ujhelyi Depo. at 134:15-
28 136:8.)

1 On or about May 19, 2013, Ms. Ujhelyi consulted a physician about the incident at
2 Premiere on May 14, 2013. (Ujhelyi Depo. at 129:17-130:11, 130:19-24.) On May 23, 2013,
3 Ms. Ujhelyi asked her doctor to write a note requesting three days of sick leave. She also
4 testified that she notified Dr. Eric Garnighian, her acting supervisor, about her request, asked
5 him to cover her, and took three days leave. (*Id.* at 136:9-137:25 and Depo. Exs. 4-5.) Ms.
6 Ujhelyi claims that Dr. Malak denied the sick leave request and told her that she would be “on
7 AWOL” status if she did not return to work. (*Id.* at 141:21-144:6.) During the administrative
8 proceedings relating to this claim, Dr. Malak claimed he told Ms. Ujhelyi her sick leave would
9 be approved once USDA FSIS received proper documentation. (Docket No. 110, Declaration
10 of Valerie Sewell (“Sewell Decl.”), ¶ 6, Ex. K (Malak Interrogatory Responses to
11 Interrogatories 51 and 52).)

12 On or about June 6, 2003, Dr. Prasad recommended that USDA FSIS terminate Ms.
13 Ujhelyi during her probationary period. Dr. Prasad stated that Ms. Ujhelyi: initially refused to
14 complete Form 4735; accepted Mrs. Lawson’s apology; failed to inform the Alameda District
15 Office that Premiere was operational on Saturday, May 24, 2003, and as a result no inspector
16 was present that day; and failed to follow instructions on how to document her request for sick
17 leave. (Amin Decl., ¶ 8, Ex. B at USA 790-91.)

18 On June 12, 2003, USDA FSIS terminated Ms. Ujhelyi’s employment. (*Id.*, ¶¶ 8-9, Exs.
19 C-D.) In its “Notice of Termination of Probationary Appointment” USDA FSIS stated that it
20 had “received documentation regarding [Ms. Ujhelyi’s] failure to follow Agency guidelines,
21 failure to follow instructions, and [her] inability to make unilateral decisions,” which USDA
22 FSIS deemed “a serious breach of the standards of conduct[.]” (*Id.*, ¶ 9, Ex. D.)

23 On November 24, 2003, USDA FSIS, through the USDA’s National Finance Center
24 (“NFC”) issued Ms. Ujhelyi a Bill for Collection for \$1703.49, for moving expenses.
25 According to USDA FSIS, Ms. Ujhelyi did not complete her Service Agreement, so it was
26 entitled to collect this money from her. (Ujhelyi Depo. at 181:4-183:14 and Depo. Exs. 17-21;
27 Docket No. 109, Declaration of Yvonne Martin (“Martin Decl.”), ¶¶ 4-5, Ex. B.) Ms. Ujhelyi
28 claims she requested reconsideration of this debt, but when NFC kept sending her bills, she paid

the debt in order to avoid an adverse credit rating. According to Ms. Ujhelyi, although she continued to request that the debt be waived, neither NFC nor USDA FSIS has processed her request or acted on it. (*Id.* at 184:17-186:18 and Depo. Exs. 22-23.) According to USDA FSIS, it has no evidence that it received a request to reconsider the debt. (Docket No. 112, Declaration of Karen Betts (“Betts Decl.”), ¶¶ 3-4; Docket No. 122, Declaration of Joyce Smith (“Smith Decl.”), ¶ 4.)

Ms. Ujhelyi’s husband, Dr. Milsolav Muller (“Dr. Muller”) also worked for the USDA. (Falk Decl., Ex. B (Deposition of Miloslav Muller (“Muller Depo.”) at 21:6-22.) Well before USDA FSIS hired Ms. Ujhelyi, Dr. Muller reported and complained about a hate crime incident at one of his prior duty stations. (Muller Depo. at 36:24-37:23.) However, Dr. Muller testified that when he accompanied Ms. Ujhelyi to her orientation in July 2002, he met with Dr. Prasad, who he knew from a previous work assignment. Dr. Muller testified that he mentioned to Dr. Prasad that he felt the USDA might have retaliated against him because of his involvement in reporting the hate crime incident. (*Id.* at 93:23-94:21, 96:2-14.) During the administrative proceedings relating to this matter, Dr. Prasad denied that he knew about Dr. Muller’s EEO Activity. (Sewell Decl., Ex. M (Prasad Interrogatory Response to Interrogatory No. 7.)

In addition to his involvement with the hate crime incident, in March 2003, Dr. Muller filed an EEO complaint in which he alleged the USDA retaliated against him, and in May 2003, he served as an EEO representative for, and filed an affidavit on behalf of, another co-worker who filed an EEO complaint alleging race and disability discrimination. (*Id.* at 11:5-15, 37:9-23, 47:24-52:14, 64:25-20.) The Court shall refer to Dr. Muller’s reporting of the hate crime incident, the filing of his own complaint, and his representation of his co-worker as “Dr. Muller’s EEO Activity.”³

On August 14, 2012, Ms. Ujhelyi filed this lawsuit and asserted claims for alleged retaliation in violation of Title VII of the Civil Rights Act, 42 U.S.C. sections 2000e, *et. seq.* In her first claim for relief, she alleges that USDA FSIS terminated her because of Dr. Muller’s

³ According to the record, Dr. Muller has engaged in other EEO Activity during his tenure with the USDA. These three incidents are the only instances of his EEO Activity that are material to this dispute.

1 EEO Activity. In her second claim for relief, she contends that USDA FSIS retaliated against
 2 her, because she filed an EEO complaint relating to her termination, by refusing to reconsider
 3 her debt.

4 The Court shall address additional facts as necessary in the remainder of this Order.

5 ANALYSIS

6 **A. The Court Denies Ms. Ujhelyi's Motion To Compel Discovery.**

7 **1. Applicable Legal Standards.**

8 Rule 37 of the Federal Rules of Civil Procedure enables the propounding party to bring a
 9 motion to compel responses to discovery. Fed. R. Civ. P. 37(a)(3)(B). The party opposing
 10 discovery bears the burden of resisting disclosure. *Miller v. Pancucci*, 141 F.R.D. 292, 299
 11 (C.D. Cal. 1992). Parties may obtain discovery regarding any matter, not privileged, that is
 12 relevant to the claim or defense of any party. Fed. R. Civ. P. 26(b)(1). Information is relevant
 13 for purposes of discovery if "it is reasonably calculated to lead to the discovery of admissible
 14 evidence." *Id.* Relevant information encompasses "any matter that bears on, or that reasonably
 15 could lead to other matter that could bear on, any issue that is or may be in the case."
 16 *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). Because discovery is designed
 17 to define and clarify the issues in the case, it is not limited to the precise issues raised in the
 18 pleadings. *Id.*, at 350-51.

19 "The question of relevancy should be construed 'liberally and with common sense' and
 20 discovery should be allowed unless the information sought has no conceivable bearing on the
 21 case." *Soto v. City of Concord*, 162 F.R.D. 603, 610 (N.D. Cal. 1995) (quoting *Miller*, 141
 22 F.R.D. at 296). However, the Court may limit discovery if it determines the discovery sought is
 23 unreasonably cumulative or obtainable from a more convenient or less expensive source, the
 24 party seeking discovery had ample opportunity to obtain the information sought, or the burden
 25 or expense of the proposed discovery outweighs its likely benefit. Fed. R. Civ. P. 26(b)(2)(C).

26 **2. First Set Of Requests For Production ("RFP") Dated February 26, 2014.**

27 Ms. Ujhelyi moves this Court to compel responses to her First Set of Requests for
 28 Production, dated February 26, 2014, on the basis that Secretary Vilsack provided insufficient

1 responses. Secretary Vilsack, on the other hand, opposes Ms. Ujhelyi's Motion on the basis
2 that he already produced all responsive documents in his possession, custody, and control.

3 **a. RFP No. 4.**

4 Ms. Ujhelyi asks the Court to compel Secretary Vilsack to produce "all documents
5 reflecting, relating to, or supporting [her] formal discipline and documents concerning the
6 termination." (First Set of RFP, RFP No. 4.) Ms. Ujhelyi contends she needs these documents
7 to prove that she did not engage in any improper conduct. Secretary Vilsack opposes Ms.
8 Ujhelyi's request on the basis that he already produced all responsive documents in his
9 possession, custody, and control.

10 Federal Rule of Civil Procedure 34 governs requests for production. The rule permits a
11 party to "serve on any other party" a request to produce or allow inspection of documents or
12 tangible items that are "in the responding party's possession, custody, or control." Fed. R. Civ.
13 P. 34(a)(1). The party seeking production of the documents bears the burden of proving that the
14 opposing party has such control. *United States v. International Union of Petroleum and Indus.*
15 *Workers, AFL-CIO*, 870 F.2d 1450, 1452 (9th Cir. 1989) (citing *Norman v. Young*, 422 F.2d
16 470, 472-73 (10th Cir. 1970)). The responding party must then make a reasonable inquiry to
17 determine whether the responsive documents exist and, if they do not, the party should so state
18 with sufficient specificity to allow the Court to determine whether the party made a reasonable
19 inquiry and exercised due diligence. *Rogers v. Giubino*, 288 F.R.D. 469, 485 (S.D. Cal. 2012)
20 (omitting quotations and citations). "A party, however, is not required to create a document
21 where none exists." *Id.* (citing *Goolsby v. Carrasco*, 2011 WL 2636099, at *7-8 (E.D. Cal.
22 July 5, 2011)).

23 Based on the record, the Court concludes that Secretary Vilsack made a diligent effort to
24 search for and produce responsive documents. Rather than merely asserting that he conducted a
25 diligent search, Secretary Vilsack describes his search with specificity by listing the documents
26 he found and in some cases, where he found them. The Court also concludes that Ms. Ujhelyi
27 has not met her burden of proving that Secretary Vilsack has possession, custody or control of
28 all of the documents she seeks.

1 Accordingly, the Court denies Ms. Ujhelyi's motion to compel additional documents
2 responsive to RFP No. 4.

3 **b. RFP No. 6.**

4 Ms. Ujhelyi asks the Court to compel Secretary Vilsack to produce "a verified copy of
5 completed original FSIS Form 4735-5 Reporting Form for Assault, Threats of Assault,
6 Intimidation, submitted by Plaintiff to the USDA, FSIS Alameda District Office on May 15,
7 2003, that shows the USDA monitoring and tracking of that particular workplace violence
8 incident." (First Set of RFP, RFP No. 6.) Ms. Ujhelyi contends that she needs this document to
9 show that the USDA failed to properly investigate the workplace violence she endured on May
10 14, 2003. Secretary Vilsack objects to this request on the same grounds that he objected to RFP
11 No. 4, *i.e.*, that he produced all responsive documents in his possession, custody, and control.

12 The Court denies Ms. Ujhelyi's motion to compel documents responsive to RFP No. 6
13 for the reasons it denied her request to compel documents responsive to RFP No. 4.

14 **c. RFP No. 7.**

15 Ms. Ujhelyi asks the Court to compel Secretary Vilsack to produce "all copies of the
16 U.S. Department of Agriculture, the U.S. Department of Labor, and the U.S. Office of
17 Personnel Management's regulations, directives, memoranda, guidance, and other applicable
18 rules and policies that Plaintiff allegedly violated and that led to the Agency's decision to
19 terminate Plaintiff's employment. Please indicate specific action/or omission in conjunction
20 with specific official regulations, etc." (First Set of RFP, RFP No. 7.) Ms. Ujhelyi contends
21 that she needs these documents to show that she did not violate any USDA policies. Secretary
22 Vilsack objects to this request on the same grounds that he objected to RFP No. 4, *i.e.*, that he
23 has produced all responsive documents in his possession, custody, and control. Secretary
24 Vilsack also argues that requesting him to identify specific actions and/or omissions that
25 violated USDA policies and regulations is not proper under Rule 34.

26 The Court denies Ms. Ujhelyi's motion to compel documents responsive to RFP No. 7,
27 for the same reasons it has denied her motion to compel documents responsive to RFP Nos. 4
28 and 6. In addition, to the extent she moves to compel Secretary Vilsack to identify a "specific

1 action/or omission in conjunction with specific official regulations,” that request does not relate
2 to documents.

3 Ms. Ujhelyi did propound an interrogatory on Secretary Vilsack requesting this
4 information, and Secretary Vilsack responded by referring her to documents he had produced.
5 (Docket No. 144-3, Request for Judicial Notice, Ex. 3.) To the extent Ms. Ujhelyi argues that
6 she needs the level of detail called for by the interrogatory, which pertains to the reasons USDA
7 FSIS stated it had decided to terminate her, the Court denies the request for the reasons set forth
8 in Section B.

9 **3. Ms. Ujhelyi’s Second Set Of RFP, Dated March 1, 2014.**

10 Ms. Ujhelyi also moves this Court to compel responses to her Second Set of RFP, dated
11 March 1, 2014. Secretary Vilsack opposes Ms. Ujhelyi’s motion on the basis that he is
12 prohibited, either by law or for privacy reasons, from producing the documents she seeks.

13 **a. RFP No. 1.**

14 Ms. Ujhelyi asks the Court to compel Secretary Vilsack to produce the “U.S. Office of
15 Personnel Management Standard Form 52 reflecting duty station assignment of the USDA,
16 FSIS Inspector Ron Canady [“Canady”] in Petaluma Circuit during the times of events
17 described in this complaint.” (Second Set of RFP, RFP No. 1.) Ms. Ujhelyi contends that she
18 needs the document to show retaliatory motive by USDA FSIS in regards to an “unexplained
19 alteration of [her] duties” upon arrival at her permanent duty station in Eureka, California.
20 Secretary Vilsack argues that because Canady is not a party to this action, Ms. Ujhelyi’s request
21 for his personnel records implicates his privacy interests. Secretary Vilsack also argues that
22 Ms. Ujhelyi’s request is overly broad, unduly burdensome, and seeks information that is not
23 reasonably calculated to lead to the discovery of admissible evidence. The Court finds the latter
24 argument persuasive.

25 The Court already ruled that she failed to exhaust her administrative remedies for any
26 claim based on alteration of her duties. (Docket No. 43, Order Granting, in Part, and Denying,
27 in Part, Motion to Dismiss at 10:12-17.) Thus, these documents are not reasonably calculated to
28

1 lead to the discovery of admissible evidence, and the Court denies Ms. Ujhelyi's motion to
2 compel documents responsive to RFP No. 1.

3 **b. RFP No. 2.**

4 Ms. Ujhelyi asks the Court to compel Defendant to produce "W-2 Forms of a Veterinary
5 Medical Officer(s) issued by the USDA, National Finance Center, and who was (were)
6 employed by the Agency, and who replaced Plaintiff in Eureka, California, Establishment 6066
7 Redwoods Meats after she was terminated, for the time period of 2003-2013." (Second Set of
8 RFP, RFP No. 2.) Ms. Ujhelyi contends that she needs these documents to calculate lost wages.
9 Ms. Ujhelyi does not require that information to oppose Secretary Vilsack's motion for
10 summary judgment, and in light of the Court's ruling on that motion, the Court denies this
11 request as moot.

12 **c. RFP No. 3.**

13 Ms. Ujhelyi asks the Court to compel Secretary Vilsack to produce "all documents
14 reflecting the USDA, FSIS Alameda District Office management's communication with [Dr.
15 Aquino and Mr. Crowe]", including copies of any FSIS Forms 4735 submitted by them to the
16 USDA, FSIS Alameda District Office. This should include copies of disciplinary actions
17 against them after they reported in February 2003 that they were attacked by" Premiere's
18 owners. (Second Set of RFP, RFP No. 3.) Ms. Ujhelyi contends that she needs these
19 documents to show that Dr. Aquino and Mr. Crowe did not file workplace violence reports and
20 were not disciplined for their failure to submit a Form 4735. Ms. Ujhelyi claims that this will
21 show that the USDA did not follow its own guidelines and regulations, which would be
22 evidence of pretext.

23 For the reasons set forth in its ruling on the motion for summary judgment, even if this
24 evidence existed, it would not be material. Accordingly, in light of that ruling, the Court denies
25 this request as moot.

26 **B. The Court Denies Ms. Ujhelyi's Rule 56(d) Motion.**

27
28

1 On July 28, 2014, after the Court vacated the hearing on the motion for summary
2 judgment, Ms. Ujhelyi filed a motion pursuant to Federal Rule of Civil Procedure 56(d), which
3 provides, in pertinent part, that:

4
5 if a nonmovant shows by affidavit or declaration that, for specified reasons,
6 it cannot present facts essential to justify its opposition, the court may: (1)
7 defer considering the motion or deny it; (2) allow time to obtain affidavits
or declaration or to take discovery; or (3) issue any other appropriate order.

8 Fed. R. Civ. P. 56(d).

9 Although Ms. Ujhelyi is proceeding *pro se*, she is expected to comply with the Federal
10 Rules of Civil Procedure, the Local Rules, and this Court's standing orders. *See, e.g., Ghazali*
11 *v. Moran*, 46 F.3d, 52, 54 (9th Cir. 1995) (noting that *pro se* litigants are bound by the rules of
12 procedure), *cert denied*, 516 U.S. 838 (1995); Civil L.R. 3-9(a). A party seeking relief under
13 Rule 56(d) must bring the motion before the summary judgment hearing. Failure to comply
14 with that requirement is a valid basis to deny relief. *See, e.g., United States v. Kitsap Physician*
15 *Service*, 314 F.3d 995, 1000 (9th Cir. 2002). In addition, if the discovery the party seeks would
16 be fruitless or if the party fails to conduct discovery diligently, a court also may deny a Rule
17 56(d) motion. *See Jones v. Blanas*, 393 F.3d 918, 930 (9th Cir. 2004) ("summary judgment in
18 the face of requests for additional discovery is appropriate only where such discovery would be
19 'fruitless' with respect to the proof of a viable claim."); *Pfingston v. Ronan Engineering Co.*,
20 284 F.3d 999, 1005 (9th Cir. 2002) ("A movant cannot complain if it fails diligently to pursue
21 discovery before summary judgment.").

22 Ms. Ujhelyi submitted her motion for discovery *after* the Court deemed the motion for
23 summary judgment submitted. That alone would be a valid basis to deny her request. In
24 addition, for the reasons set forth in Section A, the Court finds that much of the discovery that
25 Ms. Ujhelyi seeks would be fruitless, because many of those requests are not material to
26 resolution of the motion for summary judgment. To the extent she seeks a continuance to
27 obtain information from USDA FSIS regarding the reasons it terminated her, the record shows
28 that USDA FSIS did provide her with an explanation as to why it terminated her. Ms. Ujhelyi

1 does not explain what she expects to discover from the more detailed information or how that
2 information might alter the outcome of the motion for summary judgment. She also has not
3 shown that she acted diligently in attempting to obtain this information from Secretary Vilsack
4 before the deadline for fact discovery had closed.

5 Ms. Ujhelyi also asks the Court to defer ruling on the motion for summary judgment so
6 that she may depose Amin. Ms. Ujhelyi alleged that Amin delivered the notice of termination
7 to her. Thus, she has known of his involvement in this matter since the inception of this
8 litigation. However, Ms. Ujhelyi does not suggest that she made any efforts to depose him
9 before fact discovery closed. Accordingly, Ms. Ujhelyi has not demonstrated that she was
10 diligent in pursuing this discovery.

11 For each of these reasons, the Court DENIES Ms. Ujhelyi's Rule 56(d) motion.

12 **C. The Court Grants, in Part, and Denies, in Part, Ms. Ujhelyi's Motion for Leave to**
13 **File a Request for Judicial Notice.**

14 On August 8, 2014, Ms. Ujhelyi filed a motion for leave to file a request for judicial
15 notice.⁴ In her proposed request for judicial notice, she asks the Court to take judicial notice of:
16 Secretary Vilsack's initial disclosures and responses to various discovery requests (Exhibits 1-
17 6); documents from the administrative proceedings that preceded this lawsuit (Exhibits 7-41);
18 various documents issued by the EEOC (Exhibits 42-43); copies of various opinions issued by
19 the United States Courts of Appeals for the Seventh and Ninth Circuits (Exhibits 44-47); and
20 copies of documents that are already on file in this case (Exhibits 48-50). The Court denies, as
21 moot, the motion for leave to file a request for judicial notice of Exhibits 48-50, because they
22 already are on file in this case as exhibits to or declarations in support of Secretary Vilsack's
23 motion for summary judgment.

24 With respect to Exhibits 1-43, to the extent these documents comprise court filings or
25 other public documents, the Court will take judicial notice of the fact that they were filed.

26
27 ⁴ Secretary Vilsack asked the Court to strike this motion for leave to file as an
28 unauthorized response to the substance of the motion for summary judgment. For the
reasons set forth in the Court's ruling on the motion for leave to file the request for judicial
notice, the Court denies the request to strike. The Court does not require a substantive
response from Secretary Vilsack to the proposed request for judicial notice.

1 However, the Court cannot take judicial notice of disputed facts contained in those documents.
2 In addition, the Court is not required to scour these documents to find support for Ms. Ujhelyi's
3 opposition to Secretary Vilsack's motion for summary judgment. *See Keenan v. Allan*, 91 F.3d
4 1275, 1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir.
5 1995) (stating that it is not a district court's task to "scour the record in search of a genuine
6 issue of triable fact").

7 Ms. Ujhelyi includes arguments about why Exhibits 1-43 are relevant to the motion for
8 summary judgment. She also includes argument about the case law included as Exhibits 44-47.
9 To the extent Ms. Ujhelyi is seeking to file a sur-reply to Secretary Vilsack's motion for
10 summary judgment, the Court denies that request, and it has not considered any argument set
11 forth in the proposed request for judicial notice.

12 Finally, the Court construes Ms. Ujhelyi's request for judicial notice of the cases
13 included as Exhibits 44-47, as a request for leave file a notice of supplemental authority. The
14 parties cited *Ray v. Henderson*, 217 F.3d 1234 (9th Cir. 2000) in their briefs, and Secretary
15 Vilsack cited *Dawson v. Entek Int'l*, 630 F.3d 928 (9th Cir. 2011) in his briefs. Accordingly,
16 the Court denies, as moot, Ms. Ujhelyi's request for leave to bring Exhibits 44 and 47 to the
17 Court's attention. Although *Hawn v. Executive Jet Management*, 615 F.3d 1151 (9th Cir. 2010)
18 and *Radue v. Kimberly-Clark*, 219 F.3d 612 (7th Cir. 2000) would not qualify as supplemental
19 authority under Northern District Civil Local Rule 7-3(d)(2), the Court shall consider those
20 cases when it resolves Secretary Vilsack's motion for summary judgment.

21 Accordingly, the Court GRANTS, IN PART, AND DENIES, IN PART, Ms. Ujhelyi's
22 request for judicial notice.

23 **D. The Court Denies Ms. Ujhelyi's Motion Leave to File a Motion for Sanctions.**

24 On August 12, 2014, Ms. Ujhelyi filed a motion for leave to file a motion for sanctions,
25 In her proposed motion for sanctions, she contends that Secretary Vilsack submitted false
26 evidence to the Court to suggest that she did not submit a request for reconsideration of her
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28

1 debt. (Docket No. 147-2, Proposed Motion for Sanctions at 5:10-11.)⁵ The Court has reviewed
 2 Ms. Ujhelyi's proposed motion and the evidence that she contends is fraudulent, but it finds she
 3 fails to make a sufficient showing that her motion for sanctions is warranted.

4 Accordingly, the Court DENIES the motion for leave to file a motion for sanctions.

5 **E. The Court Grants Secretary Vilsack's Motion for Summary Judgment.**

6 **1. Legal Standards Applicable to Motion for Summary Judgment.**

7 Summary judgment is appropriate when the record demonstrates "that there is no
 8 genuine issue as to any material fact and that the moving party is entitled to judgment as a
 9 matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if there is sufficient evidence for a
 10 reasonable fact finder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477
 11 U.S. 242, 248-49 (1986). "[A]t the summary judgment stage the judge's function is not . . . to
 12 weigh the evidence and determine the truth of the matter but to determine whether there is a
 13 genuine issue for trial." *Id.* at 249. A fact is "material" if it may affect the outcome of the case.
 14 *Id.* at 248. The party moving for summary judgment bears the initial responsibility of
 15 identifying those portions of the record which demonstrate the absence of a genuine issue of a
 16 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

17 Once the moving party meets this initial burden, the non-moving party "may not rest
 18 upon the mere allegations or denials of the adverse party's pleading, but the adverse party's
 19 response, by affidavits or as otherwise provided in this rule, must set forth specific facts
 20 showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). In the absence of such
 21 facts, "the moving party is entitled to a judgment as a matter of law." *Celotex*, 477 U.S. at 323;
 22 *see also Keenan*, 91 F.3d at 1279.

23 **2. Legal Standards Applicable to Title VII Retaliation Claims.**

24 Under Title VII, it is unlawful for an employer to retaliate against an employee
 25 "because [s]he has opposed any practice made an unlawful employment practice by this

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 27 ⁵ Secretary Vilsack asked the Court to strike this motion for leave to file as an
 28 unauthorized response to the substance of the motion for summary judgment. Because the
 Court finds that the proposed motion has no merit, it denies that request, and it has not
 considered the arguments raised in the motion for sanctions in its analysis of the motion for
 summary judgment.

subchapter, or because [s]he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.” 42 U.S.C. § 2000e-3(a). A retaliation claim may be based on allegations that a plaintiff was terminated because a family member engaged in protected activities. *See Thompson v. North American Stainless, LP*, 562 U.S. 170, 131 S. Ct. 863, 867-68, 870 (2011).

Ms. Ujhelyi has not proffered “direct evidence” of retaliation, *i.e.*, “evidence which, if believed, proves the fact” of retaliatory motive “without inference or presumption.” *Vasquez v. County of Los Angeles*, 349 F.3d 634, 640 (9th Cir. 2004). Accordingly, Ms. Ujhelyi’s retaliation claims are governed by the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Dawson*, 630 F.3d at 937. First, Ms. Ujhelyi must establish a *prima facie* case of retaliation. *Id.* at 936. If Ms. Ujhelyi is able to establish a *prima facie* case of retaliation, the burden shifts to Secretary Vilsack to “offer evidence that the challenged action was taken for legitimate, [non-retaliatory] reasons.” *Id.* If the Secretary Vilsack meets his burden, “the *McDonnell Douglas* framework drops out of the picture entirely, and [Ms. Ujhelyi] bears the full burden of persuading the factfinder that the employer intentionally discriminated against [her].” *Coghlan v. American Seafoods Co.*, 413 F.3d 1090, 1094 (9th Cir. 2005). That is, she bears the burden of showing that Secretary Vilsack’s proffered reasons for the adverse employment action were a pretext for retaliation. *Dawson*, 630 F.3d at 936-37; *Vasquez*, 349 F.3d at 640.

3. The Termination Claim.

Ms. Ujhelyi contends that USDA FSIS terminated her because of Dr. Muller’s EEO Activity. In order to make a *prima facie* case of retaliation on this theory of liability, Ms. Ujhelyi must show that (1) that Dr. Muller engaged in a protected activity; (2) that she was subsequently subjected to an adverse employment action; and (3) that a causal link exists between the two. It is undisputed that Dr. Muller engaged in protected activity and that USDA

1 FSIS terminated Ms. Ujhelyi.⁶ Therefore, she has satisfied the first two elements of her *prima*
 2 *facie* case. Secretary Vilsack argues he is entitled to summary judgment, because Ms. Ujhelyi
 3 cannot establish the requisite causal connection between Dr. Muller's EEO Activity and her
 4 termination.

5 "The requisite degree of proof necessary to establish a *prima facie* case for Title VII and
 6 ADEA claims on summary judgment is minimal and does not even need to rise to the level of a
 7 preponderance of the evidence." *Wallis v. J.R. Simplot, Co.*, 26 F.3d 885, 889 (9th Cir. 1994).
 8 In order to establish causation, Ms. Ujhelyi must show that her husband's protected activity was
 9 one of the reasons she was terminated and that "but for such activity," she would not have been
 10 terminated. *Villairimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1064-65 (9th Cir. 2002)
 11 (internal quotations omitted). "Essential to a causal link is evidence that the employer was
 12 aware" of the allegedly protected activity. *Cohen v. Fred Meyer, Inc.*, 686 F.2d 793, 796 (9th
 13 Cir. 1982).

14 In order to establish causation, Ms. Ujhelyi relies, in part, on the timing of the events in
 15 question. "[P]roximity in time between the protected action and the allegedly retaliatory
 16 employment decision," may support an inference of causation. *Ray*, 217 F.3d at 1244 (internal
 17 quotations and citations omitted); *see also Dawson*, 630 F.3d at 936 ("causal link can be
 18 inferred from ... employer's knowledge and ... proximity in time"). Dr. Muller testified that he
 19 discussed his involvement with the hate crime incident with Dr. Prasad in July 2002, although,
 20 as noted, Dr. Prasad denied that he knew about this incident. USDA FSIS did not terminate Ms.
 21 Ujhelyi until May 2003. Courts should not apply *per se* rules to determine that a given time
 22 period supports or negates causation. *See Coszalter v. City of Salem*, 320 F.3d 968, 977-78 (9th
 23 Cir. 2003). However, the "cases that accept mere temporal proximity between an employer's
 24 knowledge of protected activity and an adverse employment action as sufficient evidence of
 25 causality ... uniformly hold that the temporal proximity must be 'very close.'" *Clark Co. Sch.*

26
 27 ⁶ The Court previously ruled that Ms. Ujhelyi failed to exhaust administrative
 28 remedies as to any claim that USDA FSIS altered her duties when she began working for that
 agency. Therefore, the Court has not considered Ms. Ujhelyi's arguments that the alteration
 of her duties also qualifies as an adverse employment action.

1 *Dist. v. Breeden*, 532 U.S. 268, 273-74 (2001) (citing cases). Indeed, in the *Breeden* case, the
 2 Supreme Court stated that “action taken . . . 20 months later suggests, by itself, no causality at
 3 all.” *Id.* at 274. In this case, the nine month gap between the alleged conversation between Dr.
 4 Prasad and Dr. Muller, standing alone, would be too long to establish the requisite causal
 5 relationship. *See Manatt*, 339 F.3d at 802.

6 It is undisputed that Dr. Muller also engaged in EEO Activity in March and May of
 7 2003. Although the timing of this activity might support an inference of causation, Ms.
 8 Ujhelyi’s supervisors and the relevant decision makers denied that they were aware of this
 9 activity. (*See, e.g.*, Amin Decl., ¶¶ 7, 10; Sewell Decl., Ex. K (Malak Response to
 10 Interrogatories Nos. 6, 7); Sewell Decl., Ex. K (Prasad Response to Interrogatories, Nos. 6, 7.)
 11 Ms. Ujhelyi has not submitted any evidence to rebut these denials. Indeed, Ms. Ujhelyi was not
 12 aware of these instances of Dr. Muller’s EEO Activity until after she filed this case. (Muller
 13 Depo. at 120:20-122:5.)

14 Ms. Ujhelyi contends that she and Dr. Muller suspect that the USDA included reports of
 15 Dr. Muller’s EEO Activity in Ms. Ujhelyi’s personnel file and that individuals within the
 16 agency discussed their activities. (*See, e.g.*, Ujhelyi Depo. at 200:7-15, 201:13-202:7; Muller
 17 Depo. at 115:22-123:3.) However, “a plaintiff’s belief that a defendant acted from unlawful
 18 motive, without evidence supporting that belief, is no more than speculation or unfounded
 19 accusation about whether the defendant really did act from an unlawful motive.” *Carmen v.*
 20 *San Francisco Unified School District*, 237 F.3d 1026, 1028 (9th Cir. 2001).

21 Ms. Ujhelyi also argues that Dr. Prasad, who allegedly knew about the hate crime
 22 incident, was directly responsible for the decision to terminate her. (*See* Compl. ¶¶ 50, 67.)
 23 According to the record, although Dr. Prasad submitted the recommendation to terminate Ms.
 24 Ujhelyi, he was not the ultimate decision maker. In addition, Dr. Prasad did not refer to Dr.
 25 Muller’s EEO Activity in the letter recommending that USDA FSIS terminate Ms. Ujhelyi.
 26 (*See, e.g.*, Docket No. 111, Declaration of Luz Cantres, ¶¶ 1, 4-5, Ex. A; Amin Decl., ¶¶ 6, 8-9,
 27 Ex B at USA 790-91, Exs. C-D.) Ms. Ujhelyi has not proffered any evidence to dispute those
 28

facts, and she has not submitted evidence to show that anyone advised the relevant decision makers about Dr. Muller's EEO Activity.

Ms. Ujhelyi also argues that Dr. Malak failed to follow USDA policies regarding sick leave, processing of workplace violence reports, and processing of worker's compensation claims and time cards. However, there is no evidence in the record that Dr. Malak was aware of Dr. Muller's EEO Activity when took those actions.⁷

Finally, Ms. Ujhelyi argues that neither Dr. Aquino nor Mr. Crowe filed a Form 4735 after they experienced instances of harassment at Premiere. According to Ms. Ujhelyi, they were not disciplined because of this failure. In essence, Ms. Ujhelyi argues that Dr. Aquino and Mr. Crowe were similarly situated to her but treated more favorably and that this raises dispute of fact on the issue of causation. "[W]hether two employees are similarly situated is ordinarily a question of fact." *Beck v. United Food & Commercial Workers union Local 99*, 506 F.3d 874, 885 n.5 (9th Cir. 2007). A plaintiff must show that she is "similarly situated to those employees in all material respects, and materiality is a "fact-intensive inquiry, and what facts are material will vary depending on the case." *Hawn*, 615 F.3d at 1157. Generally, "individuals are similarly situated when they have similar jobs and display similar conduct." *Vasquez*, 349 F.3d at 641. An employee in a supervisory role is generally not similarly situated to a non-supervisory employee. *See id.* The same is true when probationary and non-probationary employees are involved. *See, e.g., Steik v. Garcia*, 2003 WL 22992223, at *8 (N.D. Cal. Dec. 9, 2003).

Dr. Aquino was Ms. Ujhelyi's supervisor, and thus differs from her in that respect. Mr. Crowe is a USDA compliance inspector and, thus, might be Ms. Ujhelyi's peer, but she does not indicate whether Mr. Crowe also was a probationary employee. In addition, the fact that Ms. Ujelhyi initially failed to file a Form 4735 was not the only reason cited for her termination, and there is no evidence in the record that either Dr. Acquino or Mr. Crowe engaged in similar conduct. Taking the facts, and reasonable inferences therefrom, in the light most favorable to

⁷ In addition, Secretary Vilsack submitted evidence that Ms. Ujhelyi's request for sick leave was granted and processed correctly. (*See* Docket No. 108, Declaration of Yvonne Stoltz, ¶¶ 1, 3, Ex. A.)

1 Ms. Ujhelyi, even if USDA FSIS treated Dr. Aquino and Mr. Crowe differently, in that they
2 were not required to file a Form 4735, that fact is not material, because there is insufficient
3 evidence to suggest that they are similarly situated to Ms. Ujhelyi.

4 The Court concludes that Ms. Ujhelyi has not come forth with sufficient evidence to
5 meet her burden to show there are disputed facts on the issue of causation and, thus, has failed
6 to show there are genuine issues of fact in dispute on her *prima facie* case of retaliation.
7 However, assuming *arguendo* that Ms. Ujhelyi has put forth the minimal proof necessary to
8 establish disputed issue of fact in her *prima facie* case, the Court would still grant Secretary
9 Vilsack's motion for summary judgment on the termination claim.

10 According to the record, USDA FSIS terminated Ms. Ujhelyi because of her "failure to
11 follow agency guidelines, failure to follow instructions, and [her] inability to unilaterally make
12 decisions," as set forth more specifically in Dr. Prasad's letter recommending that she be
13 terminated. (Amin Decl., Ex. B at USA 790-91.) Ms. Ujhelyi does not argue that these are not
14 legitimate reasons to terminate an employee. Rather, she maintains that these reasons are, in
15 fact, a pretext for retaliation. Thus, at this point, the *McDonnell Douglas* framework drops out
16 of the Court's analysis, and Ms. Ujhelyi bears the full burden of showing that these reasons are
17 a pretext for retaliation. *See, e.g., Hawn*, 615 F.3d at 1158 (noting that "plaintiff's burden is
18 much less at the *prima facie* stage than at the pretext stage"); *Vasquez*, 349 F.3d at 640. Ms.
19 Ujhelyi may "show pretext directly, by showing that discrimination more likely motivated"
20 USDA FSIS, or indirectly, by showing that USDA FSIS's explanation for terminating her is
21 "unworthy of credence." *Vasquez*, 349 F.3d at 641. In addition, circumstantial evidence of
22 pretext must be specific and substantial. *See, e.g., Hawn*, 615 F.3d at 1158; *Wallis*, 26 F.3d at
23 890.

24 For example, in *Ray*, the plaintiff alleged that, after he complained about gender
25 discrimination in the work place, his employer retaliated against him by removing flexible start
26 times, instituting lock downs in the workplace, and reducing his pay. *Ray*, 217 F.3d at 1237-39.
27 Although his employer offered what would otherwise qualify as legitimate reasons for taking
28 these actions, the court concluded that the plaintiff had presented sufficient evidence of pretext

1 to overcome the defendant's motion for summary judgment. Specifically, the plaintiff
 2 presented evidence that the defendant publicly announced that it had changed the start times
 3 because of the plaintiff's complaints. The plaintiff also submitted evidence that even after this
 4 change other employees were permitted to start work early. *Id.* at 1244. The court also
 5 concluded the plaintiff had presented sufficient evidence of pretext to overcome summary
 6 judgment by presenting evidence that, although the defendant instituted pay cuts across the
 7 board, the plaintiff's pay cut was the largest. *Id.*

8 In this case, there is a genuine dispute about whether Ms. Ujhelyi did accept an apology
 9 from Ms. Lawson. However, that was only one of the reasons Dr. Prasad recommended that
 10 USDA FSIS terminate her, and, to overcome Secretary Vilsack's motion, Ms. Ujhelyi must
 11 present more than a "mere ... scintilla of evidence" that USDA FSIS's reasons for terminating
 12 her are a pretext for retaliation. *Anderson*, 477 U.S. at 252.

13 The Court has considered all of the evidence set forth above, and the reasonable
 14 inferences to be drawn therefrom, in the light most favorable to Ms. Ujhelyi. The Court
 15 concludes that no reasonable juror could find that USDA FSIS terminated Ms. Ujhelyi to
 16 retaliate against her because of Dr. Muller's EEO Activity.

17 Accordingly, the Court GRANTS, IN PART, Secretary Vilsack's motion for summary
 18 judgment.

19 **4. Reconsideration of the Debt.**

20 Ms. Ujhelyi's second claim for relief is premised on the theory that Secretary Vilsack
 21 either refused to reconsider or has failed to process a request for reconsideration of the debt for
 22 moving expenses. Secretary Vilsack argues that, as a matter of law, the refusal to process the
 23 request cannot qualify as an adverse employment action. The Ninth Circuit defines the term
 24 "adverse employment action" broadly as "any adverse treatment that is based on a retaliatory
 25 motive and is reasonably likely to deter the charging party or others from engaging in protected
 26 activity." *Ray*, 217 F.3d at 1240, 1242-43. The "plaintiff must show that a reasonable
 27 employee would have found the challenged action materially adverse." *Burlington Northern &*
 28 *Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) ("*Burlington Northern*"). The materiality

1 requirement “separate[s] significant from trivial harms,” and ensures that “petty slights or minor
2 annoyances that often take place at work and that all employees experience” are not the basis
3 for Title VII retaliation claims. *Id.* “[T]he significance of any given act of retaliation will often
4 depend upon the particular circumstances. Context matters.” *Id.*

5 The record shows that the USDA advised Ms. Ujhelyi that failure to pay the debt could
6 result in referral to the Treasury Offset Program or an administrative garnishment proceeding.
7 (Ujhelyi Depo. Ex. 21.) Construing all inferences in Ms. Ujhelyi’s favor, the practical effect of
8 USDA FSIS’ alleged refusal to reconsider, or its failure process her request to reconsider, the
9 debt, would be to saddle an employee with a bill that may or may not be legitimate,
10 accompanied by threats to refer the matter to the ominous-sounding “Treasury Offset Program.”
11 In addition, these events took place after Ms. Ujhelyi lost her income as a result of the
12 termination.

13 Secretary Vilsack also argues that because Ms. Ujhelyi filed this case, the failure to
14 reconsider or to process did not “deter” *her* from engaging in protected activity. However, the
15 issue is not whether Ms. Ujhelyi subjectively found the alleged adverse action to be materially
16 adverse. The issue is whether a “reasonable employee would have found the challenged action
17 materially adverse.” *Burlington Northern*, 548 U.S. at 68. A reasonable employee might think
18 twice about pursuing an administrative complaint concerning the termination knowing that the
19 agency would respond with such practices. In light of the lack of clear authority to the contrary,
20 and taking the facts in the light most favorable to Ms. Ujhelyi, the Court concludes that the
21 refusal or failure to reconsider her debt qualifies as an adverse employment action.

22 These actions also occurred shortly after she was terminated. Accordingly, taking the
23 facts in the light most favorable to Ms. Ujhelyi, the Court concludes that she has established a
24 prima facie case of retaliation.

25 Secretary Vilsack argues that there were legitimate reasons for not reconsidering Ms.
26 Ujhelyi’s debt. He submits evidence to show that NFC did not have the authority to waive the
27 debt and that it followed proper procedures by submitting Ms. Ujhelyi’s request to USDA FSIS.
28 (*See* Ujhelyi Depo., Ex. 23; Sewell Decl., Ex. Q (Stephen Loeffelholz Response to

1 Interrogatories No. 8, 10, 12.) Secretary Vilsack admits that the record is “inconclusive” as to
2 what happened to the request after the NFC forwarded the request to USDA FSIS. (*See* Docket
3 No. 116, Declaration of Allison Opicka ¶¶ 3-4.) Secretary Vilsack also argues that, based on
4 the terms of her service agreement, although it had discretion to do so, USDA FSIS had no
5 reason to waive the debt, because Ms. Ujelhyi failed to complete the terms of her service
6 agreement. Thus, once again, the issue for the Court is whether Ms. Ujelhyi has put forth
7 sufficient evidence of pretext. The Court concludes she has not.

8 Although there is some evidence that Ms. Ujelhyi referenced her EEO complaint in
9 correspondence relating to the request for reconsideration, and there is evidence that individuals
10 at the NFC may have been aware that she filed a complaint, Ms. Ujelhyi fails to put forth any
11 evidence that the individuals at USDA FSIS who would have made the decision about whether
12 or not to waive the debt knew that she had filed a complaint relating to her termination. As with
13 her termination claim, Ms. Ujelhyi’s evidence of pretext boils down to nothing more than her
14 subjective belief that someone within USDA FSIS must have learned about her complaint and
15 retaliated against her because of it. This is not sufficient to overcome Secretary Vilsack’s
16 motion, and he is entitled to summary judgment on this claim as well.

17 CONCLUSION

18 For the foregoing reasons, the Court GRANTS Secretary Vilsack’s motion for summary
19 judgment. The Court shall issue a separate judgment, and the Clerk shall close this file.

20 **IT IS SO ORDERED.**

21 Dated: October 6, 2014

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23 JEFFREY C. WHITE
24 UNITED STATES DISTRICT JUDGE
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